

U.S. DEPARTMENT OF COMMERCE

ORIGINAL
RECEIVED

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

AUG - 9 1994

| | | |
|----------------------------------|---|-----------------------------------|
| In re |) | |
| |) | FEDERAL COMMUNICATIONS COMMISSION |
| |) | OFFICE OF THE SECRETARY |
| Amendment of Section 73.202(b), |) | MM Docket No. 92-291 |
| Table of Allotments, |) | RM-8133 |
| FM Broadcast Stations |) | |
| (Cambridge and St. Michaels, MD) |) | |

TO: Chief, Mass Media Bureau

**REPLY TO "OPPOSITION TO
PETITION FOR RECONSIDERATION"**

CWA Broadcasting, Inc. (CWA), permittee of FM Broadcast Station WFBR, Channel 232A, Cambridge, Maryland, by its attorney, and pursuant to Section 1.106 of the Commission's Rules, hereby respectfully submits this Reply to the "Opposition to Petition for Reconsideration" filed August 1, 1994 by Prettyman Broadcasting Company, Inc. (Prettyman). In so doing the following is shown:

**A Grant of Reconsideration Will Fulfill the
Commission's Commitment to Minority Broadcasting**

1. CWA is a minority-controlled company; its 100 percent shareholder, Charles W. Adams, Jr., is an African-American and a lifelong resident of the state of Maryland. Maryland's historically sordid treatment of its African-American citizens, ranging from segregated schools (such as the former Wiley H. Bates High School in Annapolis, for

No. of Copies rec'd 844
List ABCDE

example) to exclusion from swimming pools¹, is too well known. As the Commission well knows, opportunities for minority broadcasters in Maryland, particularly on its Eastern Shore, have been rare.

2. By a grant of this Petition for Reconsideration and reallocation of FM Channel 232A to St. Michaels, Maryland, the Commission will be aiding and abetting the successful establishment what we believed to be the first African-American owned FM station on the Eastern Shore.

3. CWA calls upon the Commission and its Mass Media Bureau to fulfill the pledge made by Chairman Reed Hundt at the National Urban League convention that he would "increase opportunities for minorities on the information superhighway".²

4. In its "Petition for Reconsideration", CWA carefully demonstrated the factual record in MM Docket No. 87-421. CWA demonstrated that the principal reasons that it prevailed in that hearing case were (a) Mr. Adams' minority status and (b) Mr. Adams more extensive broadcast

¹**Tillman v. Wheaton-Haven Recreation Association, Inc.**, 410 U.S. 431, 93 S. Ct. 1090, 35 L. Ed. 2d 403 (1973).

²See **Hundt pledges gains for minorities**, *Broadcasting Magazine*, Vol. 124, No. 31 (August 1, 1994) at p. 44 (attached hereto).

experience. Although CWA did receive credit for civic activities, only one of the two activities for which it received credit would be outside the 60 dBu contour of WFBR's proposed operation at St. Michaels. This loss would be more than counterbalanced by the fact that Mr. Adams principal residence is located within the 60 dBu contour of the proposed operation at St. Michaels.

5. On the law and the equities, CWA is entitled to prevail. Indeed, the Mass Media Bureau is urged to expedite consideration of this case in order to comply with Chairman Hundt's directive to increase minority opportunities in broadcasting.

**The Prettyman Opposition
Is Anything But Pretty**

6. Prettyman's "Opposition" is bereft of an understanding of the record in MM Docket No. 87-421. It is also bereft of common decency. It appears that the Prettyman "Opposition" was filed to vex CWA and its attempt to institute new service over Channel 232A on Maryland's Eastern Shore, without much in the way of fair pleading or substantive arguments to support it.

7. Prettyman fixates on a conclusory statement contained in the Review Board "Decision" in Docket 87-421, 4

FCC Rcd 4676.³ But the factual record in MM Docket No. 87-421 shows that minority status and past broadcast experience were the key factors in CWA's victory. With respect to the loci of CWA's two civic activities, one continues to be within the 60 dBu contour at St. Michaels (the other one is just outside the 60 dBu contour).

8. Prettyman posits that there is "no valid public interest argument" for reallocating Channel 232A to St. Michaels (Opposition at 3). Yet, St. Michaels has a 1990 Census population of 1,301, and is large enough to be entitled to a 47 U.S.C. §307(b) preference. **Ruarch Associates**, 99 FCC 2d 345, 56 RR 2d 1593, 1595 (¶6) (Rev. Bd. 1984), *affirmed* 101 FCC 2d 1358, 58 RR 2d 1642 (1985) (1000 persons is minimum size of community for Section 307(b) preference). Indeed, St. Michaels is one of the most famous communities on the Eastern Shore, and attracts

³It appears that counsel's review of that case was cursory, if non-existent, as it repeats the error of the Acting Chief, Allocations Branch in the "pinpoint cite". The correct citation is 4 FCC Rcd 4676, 4678 (¶20). That citation is to the Review Board's penultimate paragraph, which makes no citation to the factual record in support thereof. Prettyman does not seriously contest CWA's review of the factual record reported in the *Initial Decision of Administrative Law Judge Edward J. Kuhlmann*, 3 FCC Rcd 6481; nor could it (it should also be pointed out that the Dow firm's citation to this opinion was also incorrect--see Prettyman Opp. at 3, n. 3).

visitors from all over the United States. Clearly, there is at the very least a public interest reason--indeed, a congressionally mandated reason--to allocate a first local broadcast service to St. Michaels.

9. The undersigned finds incomprehensible Prettyman's final argument, that somehow CWA's "Petition for Reconsideration" was procedurally defective (Opp. at 4-5). A "Petition for Reconsideration" is a statutory remedy under 47 U.S.C. §405, and may be invoked in order to give the Commission an opportunity to correct errors. ***Saginaw Broadcasting Co. v. FCC***, 96 F.2d 554 (D. C. Cir. 1938), cert den. sub nom. ***Gross v. Saginaw Broadcasting Co.***, 305 U.S. 613 (1938); ***Springfield Television of Utah, Inc. v. FCC***, 710 F.2d 620, 53 RR 2d 1139, 1151 (10th Cir. 1991). CWA has amply demonstrated that the Acting Chief, Allocations Branch committed error in failing to grant CWA's "Petition for Rulemaking". Clearly, reconsideration was an appropriate remedy for CWA in this instance.

Conclusion

10. The Commission has a rare opportunity in this case to aid and abet minority ownership in broadcasting, further the objectives of Section 307(b) of the Communications Act

of 1934, as amended, and strike down a mischievous attempt by a white Eastern Shore broadcaster clearly dismayed by the prospect of African-American competition on Maryland's Eastern Shore.

WHEREFORE, CWA Broadcasting, Inc. urges that this Petition for Reconsideration **BE GRANTED,** and that the Commission **EXPEDITIOUSLY REALLOCATE** FM Channel 232A from Cambridge, Maryland to St. Michaels, Maryland and modify the current authorization for FM Broadcast Station WFBR to specify St. Michaels, Maryland as its community of license.

Respectfully submitted,

CWA BROADCASTING, INC.

By 

Dennis J. Kelly
(D. C. Bar #292631)
Its Attorney

CORDON AND KELLY
Post Office Box 6648
Annapolis, MD 21401
Telephone: 202-293-2300

August 9, 1994

Hundt pledges gains for minorities

By Christopher Stern

Invoking memories of Robert Kennedy and Martin Luther King Jr., FCC Chairman Reed Hundt last week told the National Urban League that his agency had stepped up its efforts to monitor minority hiring by broadcasters and cable systems and would work hard to increase opportunities for minorities on the information superhighway.

"We want to have the ownership and management ranks in this sector look more like the people they serve," Hundt said. He added that the FCC has given minorities, along with women and small businesses, significant advantages in its multimillion-dollar auction of radio spectrum for wireless communications (see story, page 8). The advantages include bidding credits, installment plans and tax certificates.

Hundt used his appearance at the group's convention in Indianapolis to release the latest statistics on minority employment in the broadcast and cable industries. According to FCC data, African Americans make up 11% of the work force, but black men account for only 2.8% of the management positions in the broadcast industry.

"These results reflect insufficient movement toward our goal of insuring that the broadcasting and cable

At a glance

FCC Chairman Reed Hundt cited the following numbers in addressing the state of minority ownership in telecommunications during his speech to the National Urban League last week:

- 490 of the 98,000 telecommunications firms are controlled by minority members.
- 300 of the 10,000 commercial radio stations are controlled by minority members. There are only 20 minority-controlled television stations of 1,000 licenses.
- Nine of the 7,500 cable operators are minority members.

workplaces look more like the American work force as a whole," Hundt said.

The FCC will focus on emerging technologies as a way of creating opportunities for minorities, Hundt said.

Drawing on the vision articulated 25 years ago by King and Kennedy, Hundt said, "My vision of the information highway is that it is a way for millions of Americans to bridge the gaps in education, health care and economic opportunity that divide our country."



FCC Chairman Reed Hundt: "We want to have the ownership and management ranks...look more like the people they serve."

Hundt also touted his agency's increased emphasis on equal employment opportunity rules. "In January of this year, the commission stepped up the level of enforcement of its EEO rules. We increased the level of fines imposed on broadcast stations and cable television systems that fail to maintain effective EEO programs. We issued the largest such fine in the commission's history." In January, the FCC fined Adelphia Communications' Palm Beach cable system \$121,500 for EEO violations. It was the largest EEO fine in FCC history. Total EEO fines for broadcasters add up to \$835,750.

What Hundt did not tell his audience was that the FCC was under pressure from the U.S. Court of Appeals to revisit its EEO rules. When the court recently threw out the FCC's general schedule of fines for other violations, it also criticized the commission's latest method of assessing EEO fines.

Last week, FCC General Counsel Bill Kennard said the court's decision did not mean the agency must throw out its EEO rules, as the National Association of Broadcasters had claimed. But the FCC may resort to system of assessing fines on a case-by-case basis, he said.




Congressional hearings on Whitewater were carried extensively last week by CNN, C-SPAN, the Public Broadcasting Service and National Public Radio. But in contrast to their gavel-to-gavel coverage of O.J. Simpson's pre-trial hearing, the broadcast networks covered the story through their regular newscasts. The hearings are examining alleged impropriety between the White House and Treasury Department over an investigation into President Clinton's investment in an Arkansas real estate development. At left, CNN pictures White House Counsel Lloyd Cutler (top) and Rep. John LaFalce (D-N.Y.).

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Petition for Reconsideration" has been served by first-class United States mail, postage prepaid, on this 9th day of August, 1994, upon the following:

Margaret L. Miller, Esquire
Dow Lownes and Albertson
1255 - 23rd Street, NW
Washington, DC 20037
Counsel for Prettyman Broadcasting Co.


Dennis J. Kelly